



# State superintendent grants instant tenure! What do trustees do now?

County superintendents must now hold an "evidentiary hearing" on an appeal by a nontenured teacher of his or her termination. That is what State Superintendent Nancy Keenan has recently ruled in three separate cases before her on appeal.

The Defendants were the Lambert School District in Richland County, the Colstrip School District in Rosebud County, and the Bainville School District in Roosevelt County. All three districts had terminated nontenured teachers and had given the reasons in a timely manner as required by § 20-4-206, MCA. The three teachers appealed to the respective county superintendents, who denied the appeals because the reasons were timely and complied with the "Bridger Test."

Although the law does not permit a hearing for a nontenured teacher, State Superintendent Keenan stated that it was not the intent of the legislature to insulate the reasons given nontenured teachers from all scrutiny. Nor does she believe that the legislature intended to require

good cause for nonrenewal of nontenured teachers. She said that trustees have a broad discretionary power to terminate nontenured teachers but that a school board can abuse this discretionary power. Under her ruling, nontenured teachers are entitled to an "evidentiary hearing" to prove that the school board abused its discretion in their termination.

The state superintendent used the definition of "abuse of discretion" set forth by the Montana Supreme Court:

"This Court has held that abuse of discretion involves: 'not merely an error in judgement, but perversity of will, prejudice, passion, or moral delinquency, but it does not necessarily imply wrong-doing or a breach of trust, or import bad faith; it conveys, rather the idea of acting beyond the limit of discretion; the disregard of the evidence adduced; the basing of a decision upon incompetent or insufficient evidence; and exercise of discretion to an end or purpose not justified by, and clearly against, reason and evidence; a clear error in law in the circumstance.' " [Cita-

tions omitted.] *Jeppeson v. State of Montana, Department of State Lands*, 40 St. Reporter 1272, 1277, 667, P.2d 428 (1983)

In accordance with recent Montana Supreme Court rulings, Superintendent Keenan then held that the appeal must be filed by the nontenured teacher with the county superintendent of schools. The hearing must be conducted in accordance with the rules of controversy for contested case hearings.

Keenan believes that providing a hearing to nontenured teachers will put trustees on notice that they are not free to make arbitrary or capricious decisions. She states this does not grant "instant tenure" since the school district does not have the burden of proving "good cause" for the termination. She states, "It is the nontenured teacher who has the burden of proving the board abused its discretion."

In spite of her claims, what is the practical impact of this new requirement on school districts and county superintendents? An "evidentiary hearing" must now be held on all appeals of terminations of nontenured teachers, and almost all teacher terminations are appealed or contested these days.

Further, there is no discernable difference between good cause and abuse of discretion. The definition of abuse of discretion is an elusive concept. It could include the disregard of evidence presented by the teacher, basing a decision upon insufficient evidence, and the exercise of discretion contrary to the evidence presented. All of these standards look at the *sufficiency* of the evidence. The question to be decided by county superintendents will be: Is there sufficient evidence to uphold the termination and to prove there was no abuse of discretion? That is what teachers will argue, that is the definition of abuse of discretion, and that is instant tenure! Tenure requires just cause, i.e., sufficient evidence to terminate.

## WHAT DOES THIS MEAN?

County superintendents will hold hearings this spring on all appeals by nontenured teachers. School districts must be prepared to justify those terminations with "sufficient evidence" to show they did not abuse their discretion. This will

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## Long-time trustee, Chesbro, retiring

Allen Chesbro, chairman of the Belt Districts 29 and 29D Board of Trustees in Belt, MT is retiring after 36 years of service.

Chesbro received a plaque commemorating his service to the school and community at the annual Americanism Dinner held in Belt March 14. His service began on November 3, 1954, when he was appointed to the board by then-County Superintendent Margaret Holland.

Chesbro has been a delegate to the MSBA Delegate Assembly in 1982, 1988 and 1989 and an alternate in 1983. He has been involved with the MSBA Legal Assistance Fund since its inception in 1988, and he received the Marvin Heintz Award for outstanding service to MSBA in 1981.

Belt Superintendent Al Hatcher said, "You can be sure that Mr. Chesbro's expertise and experience have been greatly appreciated and will be greatly missed by all of us."



Allen Chesbro

Robert Anderson  
Executive Director

## Concerning tax reform . . . My View



As we roll up our sleeves and prepare our school district budgets for the next fiscal year, one thing is apparent—the new system of funding devised by our legislators last summer failed to address overall tax reform, so essential for equitable and long term or stable funding of education. *The number one concern that citizens across Montana voiced during the governor's education forums was stable funding sources.*

Not that our legislators didn't take a stab at tax reform. After all, we now have a "guaranteed tax base" (if it is funded by the state?), and a flat tax on oil and coal (if a special session will correct errors made in the collection and allocation process).

With the reappraisal of property values going on across the state and with school districts trying to implement and adjust for a flawed piece of funding legislation, it is no wonder that the good old Montana taxpayer is looking at his hole card.

The Montana Tax Reform Coalition is a group made up of school people (members of Montana School Boards Association, School Administrators of Montana, Montana Education Association, and post secondary groups, etc.); business people (members of the Montana Chamber of Commerce, MonTax, Montana Retail Association, Montana Restaurant Association, etc.); and people in agriculture (members of Montana Stockgrowers Association, Montana Farm Bureau, Montana Conservation Districts, etc.). The Coalition represents over 20 member organizations from both private and public sectors. Its purpose is to "design and implement a strategy that will result in the enactment of a *comprehensive tax reform package*."

The Montana Tax Reform Coalition Policy Committee's recommendations are published elsewhere in this *Bulletin*. You will note that that committee has since met and refined these recommendations, but at press time, we did not know the provisions of this latest revision, although I doubt they will change much from the original version.

One of the center pieces of the Coalition's work has been property and income tax replacement and enhancement with a general sales tax. Since the sales tax is the newest leg of the tax support system the Coalition is proposing, it of course is the most heavily discussed and debated. (Not that the issue of the sales tax in Montana has ever been an easy subject of debate and discussion.)

In light of our projected state deficit of \$110 million and other potential budget problems, and since the legislature has exhausted every budget and revenue trick to carry on the cost of government, including decimation of the Education Coal Trust, new revenue will most likely be necessary. The alternatives are easily understood

and K-12 public education funding, under any funding system will once again be in jeopardy.

However, as we think of the needs of our schools in a long term sense, we need to realize how the health and prosperity of our educational system is connected to the health and prosperity of our Montana economy. We cannot bury our heads in the sand and ignore the plight of business and agriculture in our state, nor that of other sectors. We need to listen to leaders in these other areas and understand their concerns, and support their ideas if at all possible.

The Coalition represents ideas from a variety of sectors. A great deal of discussion, debate and compromise has already taken place, and even though some of the proposals are not new, the package they are proposing is.

I urge you to study and become familiar with the proposals of the Montana Tax Reform Coalition, not because they offer the only comprehensive package we know of at this time, but because I believe you will be better informed on these issues as they come to the forefront of the public discussion and debate we seem destined to have in our state. You, as a decision maker in your local district, will also play a major role in any decisions made at the state level concerning tax reform.

## Montana Tax Reform Coalition drafts position statement

The following recommendations were tentatively approved by a majority vote of the Policy Committee of the Montana Tax Reform Coalition on February 23, after conducting five public hearings across the state:

1. Property taxes on business machinery and equipment need to be reduced to a competitive level with other states, and to eliminate the current disincentive to invest in business machinery and equipment and create jobs. The revenue needs for cities, towns and schools needs to be replaced. We recommend a reduction in classification rate to four percent of market value. The property tax reduction and replacement revenue required will be approximately \$50 million.

2. Adequate and equitable state financing of K-12 public education requires a new revenue source and reduction of existing property taxes. We recommend allocation of \$60 million for public schools to eliminate the unequalized property tax mill levies for retirement programs.

3. Adequate funding of higher education units to the average of their peer institutions requires new revenue. We recommend \$30 million to

## Resolution deadline

June 1 is the deadline for MSBA member school districts to submit resolutions or bylaw changes. The MSBA committees dealing with these issues will meet in early June to review all of the resolutions and bylaw changes submitted.

Resolutions submitted by school districts often become part of the MSBA legislative proposals if they are adopted by the MSBA Delegate Assembly and pass during the annual meeting in October.

Mail your resolutions or bylaw changes to MSBA, One South Montana Avenue, Helena, MT 59601.

## Instant tenure

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mean building and documenting a case, preferably with formal evaluations, on every non-tenured teacher. There will no longer be a probationary period of employment for teachers.

Even though teachers must first make a showing that the school district abused its discretion, this will be easy to do. The burden of proof is not great. Simply having other teachers and parents claim the teacher does a satisfactory job may be sufficient. Once this showing is made, the burden of proof immediately shifts to the school board to show sufficient evidence to justify the termination.

These three school districts will undoubtedly appeal, but a final decision by the Montana Supreme Court will not come down in time to help school districts this spring. In the meantime, we must prepare for a barrage of hearings.

fund university units, community colleges and vocational-technical centers to the average for similar institutions in the west.

4. Residential and business property taxes should be reduced in response to Initiative 105 by reducing the classification rate for real property from 3.86 percent of market value to 3.5 percent of market value. We recommend \$25 million to replace the revenue for local government taxing jurisdictions. We further recommend the repeal of the property tax freeze contained in I-105 with the implementation of our recommendations.

5. Adequate funding of local government without further property tax increases requires new revenue to fund a block grant program to cities, towns and counties. Local governments have lost 30 percent of their purchasing power for providing services since enactment of I-105. We recommend a state block grant equal to the average of other Rocky Mountain states or approximately \$15 to \$20 million. At \$15 million, the block grant would equal 10 percent

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